

City of Albuquerque Procurement Contract

Desert Fuels, Inc.
4421 Irvin Blvd NW Ste. A
Albuquerque, NM 87114

Supplier Contact:

Mike Dewart
cam@desertfuels.com
(505)750-3835

Supplier ID: 0000136853

Contract ID	0000000000000000708218
Contract Dates	04/01/2016 – 03/31/2018
Contract Reference	B2016000027
Contract Maximum	\$0.00
Contract Print Date	3/10/2016
Origin	VAR
Page 1 of 8	

Description: Fuel, Vendor Pool

Instructions to Supplier:

- Do not fill orders for goods/services not listed in this Procurement Contract.
- Orders against this Procurement Contract must be placed with a Contract Release Order (CRO) or Purchase Order (PO).
- Do not fill orders without a CRO/PO.
- CRO/PO number must be on all invoices.

Please forward all original invoice(s) to:

City of Albuquerque
Accounting Division
PO Box 1985
Albuquerque, NM 87103

(For additional instruction see Attachment A)

Instructions to End-User:

Do Not place orders for goods/services not listed on this Procurement Contract.

Requests for fuel are to be sent to all the vendors awarded as part of the Vendor Pool for Fuel with an estimated amount, fuel type and deadline for receipt of offers.

To place an order against this Procurement Contract, issue a CRO/PO prior to placing the order with Supplier.

IMPORTANT NOTICE: BY COMMENCING WORK UNDER THIS PROCUREMENT CONTRACT, SUPPLIER ACCEPTS ALL TERMS AND CONDITIONS WITHIN AND ATTACHED TO THIS PROCUREMENT CONTRACT AND AGREES THAT, TO THE EXTENT ANY SUPPLIER TERMS CONFLICT, THE CITY'S TERMS AND CONDITIONS SHALL GOVERN. VALID ONLY WITH OFFICIAL CITY OF ALBUQUERQUE PURCHASING DIVISION SIGNATURE. WHEN ACCEPTING A HAND-CARRIED PROCUREMENT CONTRACT, SUPPLIER SHOULD CALL THE PURCHASING DIVISION TO CERTIFY THE VALIDITY OF THE PROCUREMENT CONTRACT OR REQUEST PHOTO IDENTIFICATION FROM THE PERSON PRESENTING THE PROCUREMENT CONTRACT AND MAINTAIN FOR ITS RECORDS THE DRIVER'S LICENSE NUMBER, SOCIAL SECURITY NUMBER, OR CITY ID NUMBER OF THAT PERSON. THE CITY WILL NOT BE LIABLE FOR PURCHASES MADE BY UNAUTHORIZED INDIVIDUALS. CALL 505-768-3320 WITH ANY QUESTIONS.

Purchasing Office Signature:

Viola Cunningham

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Page 2 of 8	

ATTACHMENT A

For the purchase of Unleaded Regular Gasoline, No. 2 Diesel and B5 (5%) Biodiesel to be purchased on an as needed basis.

Term: 04/01/2016-03/31/2018 with three (3) additional one (1) year extensions upon mutual written agreement.

Insurance Requirements:

General Conditions: The City will require the Supplier, referred to as the Contractor in this Section, to procure and maintain at its expense during the term of this procurement contract, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations of the Contractor under this procurement contract. Upon execution of this procurement contract and on the renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City as well as the rider or endorsement showing that it has complied with these insurance requirements. All certificates of insurance shall provide that thirty (30) days written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico, 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers' compensation, the City shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided.

Approval of Insurance: Even though the Contractor may have been given notice to proceed, it shall not begin any work under this contract until the required insurance has been obtained and the proper certificates (or policies) filed with the City. Neither approval nor failure to disapprove certificates, policies, or the insurance by the City shall relieve the Contractor of full responsibility to maintain the required insurance in full force and effect. If part of the contract is sublet, the Contractor shall include any or all subcontractors in its insurance policies, or require the subcontractor to secure insurance to protect itself against all hazards enumerated herein, which are not covered by the Contractor's insurance policies.

Coverage Required: The kinds and amounts of insurance required are as follows:

- i. **Commercial General Liability Insurance.** A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000	Per Occurrence
\$1,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire Legal
\$ 5,000	Medical Payments

Said policy of insurance shall be written on an occurrence basis and must include coverage for all operations the Contractor performs for the City. The policy of insurance must include coverage for all operations performed for the City by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of this procurement contract. A severability of interest provision must apply for all additional insureds, ensuring that the Contractor's insurance shall

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Page 3 of 8	

apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability.

- ii. **Workers' Compensation Insurance.** Workers' compensation insurance policy for the Contractor's employees, in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico, (the "Act"), with Employer's Liability coverage of not less than \$1,000,000 per accident or disease for all covered losses. If the Contractor employs fewer than three employees and has determined that it is not subject to the Act, it will certify, in a signed statement, that it is not subject to the Act. The Contractor will notify the City and comply with the Act should it employ three or more persons during the term of this procurement contract.
- iii. **Business Automobile Insurance.** With coverage as broad as Insurance Services Office Business Auto Coverage Form CA 00 01 including owned, non-owned, and hired autos. Limits shall be no less than \$1,000,000 per accident combined single limit.
- iv. **Pollution Liability Coverage.** Contractor shall maintain pollution liability coverage (environmental liability) that includes, but is not limited to, bodily injury and property damage, including clean-up costs arising out of the actual or alleged dispersal, migration, seepage, release or escape of contaminants or pollutants arising out of or related to the activities performed by or on behalf of the Contractor during the course of providing the products specified herein with limits of not less than \$2,000,000 per occurrence. Coverage may be written on a claims-made basis. If coverage is written on a claims-made form, the following shall apply:
 - (a). The retroactive date must be shown, and must be before the date of the contract or the beginning of the contract services.
 - (b). Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract services.
 - (c). If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the contract, the Supplier/Contractor must purchase an extended period of coverage for a minimum of five (5) years after completion of the contract services.
- b. **Acceptability of Insurers.** The Contractor will use insurance companies authorized to do business in the State of New Mexico and with a minimum A.M. Best rating of A-VII, covering all operations under this Agreement, whether performed by it or its agents.
- c. **Additional Insured Status.** With the exception of Worker's Compensation insurance, the

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Page 4 of 8	

City, its officials, employees and volunteers shall be endorsed as an additional insured. All coverage afforded shall be primary and non-contributory with respect to operations provided, and shall be evidenced by way of an endorsement.

- d.** Minimum Requirements. The limits of insurance as described above shall be considered as minimum requirements. No representation is made that the minimum insurance requirements set forth herein are sufficient to cover the obligations of the Contractor under this procurement contract. Should any coverage carried by the Contractor, or a subcontractor of any tier, maintain insurance with limits of liability that exceed the required limits, those higher limits shall be deemed to apply for the benefit of any person or organization included as an additional Insured and those limits shall become the required minimum limits of insurance in all Paragraphs and Sections of the contract awarded under this RFB.
- e.** Increased Limits: During the life of the contract the City may require the Contractor to increase the maximum limits of any insurance required herein. In the event that the Contractor is so required to increase the limits of such insurance, an appropriate adjustment in the contract amount will be made.

A current certificate of insurance reflecting these types and amounts will be required prior to award from the Supplier and all carriers listed by the Supplier in their bid for the delivery of fuel.

Pricing

Per gallon pricing offered includes applicable taxes and fees. No additional costs or terms shall be added to invoices.

Delivery

Deliveries of ordered product must be made within twenty-four (24) hours of order placement, and during normal operating hours (Monday thru Friday - 7:00 AM – 3:00) for the ordering entity, unless different parameters are mutually agreed upon, in writing, between the Supplier's and the City's authorized representatives. Any shipment to the City or other entity that is under contract to the City via Memorandum of Understanding (MOU), which is delayed because of the Supplier's fault, shall be paid for at the originally ordered quoted price. The City will pay only for net gallons.

Material Safety Data Sheets (MSDS)

Bidder shall submit MSDS in accordance with state and federal "Right to Know" laws on any and all chemical substances shipped under this procurement contract which are considered toxic or hazardous under the guidelines established by the federal OSHA and State of New Mexico "Right to know" laws.

Estimated Usage

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Page 5 of 8	

Anticipated annual usage was listed in the specifications for RFB B2016000027. This was to be used as a guide only in the submission of Bids and was in no way to be considered as a firm amount that will be purchased from the Supplier. Every effort was made to ensure that these quantities were as accurate as possible.

Testing

Should there be any question as to the quality of fuel furnished under this procurement contract, the City reserves the right to require testing of products furnished. If it is determined that any products purchased do not meet the specifications provided herein, the product shall be picked up immediately by the Supplier and a full credit shall be given to the City. Testing shall be ordered by the City using a certified laboratory. If City vehicles require repairs to the fueling system or engine as a result of using fuels provided under the contract awarded, Bidder shall be liable for any consequential damages including fees or charges incurred for testing if product fails and all repairs necessary to return any City vehicles affected to good, operating condition.

Spillage

The Supplier and/or those delivering on behalf of the Supplier shall take all necessary precautions to prevent spillage of products during delivery. Proper equipment maintenance, regular inspection and, when necessary, the use of collection pans during the fuel transfer will be employed to avoid leaks and/or spills. In the event of a spill, the Supplier shall be responsible for the immediate containment, mitigation of spill and cleanup of the spilled product at no cost to the City. Should the Supplier fail to take immediate action, the City may contract with a third party to accomplish the required control actions and will hold the Supplier responsible for the cost incurred plus legal fees, attorney costs and court costs.

Invoicing/Payment

Invoicing will contain, at a minimum, unit price, delivery date, contract number, Contract Release Order (CRO) or Purchase Order (PO) number, number of gallons and fuel type delivered, any applicable fees and taxes, location delivered, signature of authorized City of Albuquerque Employee, and signature of driver. Payment terms shall be Net 30.

Bill of Lading

An original Bill of Lading shall be provided by the Supplier with every shipment containing the following information:

- Bill of Lading Number
- Deliver Date/Time (Hour/Minute)
- Customer Name and Address
- Truck Number with License Plate
- Product code and name
- Bio-diesel blending data (if applicable)
- Fuel terminal name/number
- Carrier Name
- Temperature
- Gravity at 60 degrees
- Stick Reading Before and After delivery
- Net Gallons
- Gross Gallons
- Description
- Octane Rating
- Oxygenate Concentration (Volume %), as applicable

Emergency, After Hours or Holiday Deliveries

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Page 6 of 8	

The City may require fuel deliveries outside of normal operating hours (herein defined as 7:00 AM – 3:00 PM Monday through Friday). An authorized City representative will contact the Supplier with instructions on delivery time, location, address, product needed, number of gallons for delivery and the contact person's name and phone number. Emergency deliveries are defined as requests to deliver within four (4) hours of a call to the Supplier or deliveries as a result of a natural or man-made disaster. In the case of holidays, the City will make every effort to avoid such requests by employing proper management and oversight procedures.

Licensing and Regulations

Supplier shall be fully licensed as may be required by local, state and federal regulations and shall comply at all times with local, state and federal rules, regulations, laws, ordinances and statutes in the performance of the contract awarded. Failure to do so may be deemed a material breach of contract and constitute cause for immediate termination of the contract at the sole discretion of the City.

Shortage

If the Supplier foresees a shortage of gasoline and/or diesel supplies during the term of this procurement contract, it must allocate quantities of product, as determined by the City, to support the City's requirements. Supplier shall notify the City of an anticipated shortage as soon as it becomes aware. The City may elect, for public safety reasons, to reserve a specific quantity and delivery schedule for which the successful Offeror will be required to provide.

Locations and Capacity

Fuel deliveries to the City may not exceed ninety percent (90%) of the tank capacity. Before the fuel drop is made, a dipstick reading must be taken and if a Veedor Root is available, a reading shall be taken. The City reserves the right to add or discontinue fuel locations and add, remove, or change tank sizes and types over the course of this procurement contract. Notification will be provided regarding any changes.

Fuel furnished under this procurement contract shall be visibly free of un-dissolved water, sediment and suspended matter, and shall be clear and bright at ambient temperatures of 70 degrees F. The finished gasoline shall conform to the applicable test methods of ANSI/ASTM specifications and shall meet EPA standards and regulations for Bernalillo County as outlined in ASTM D4814-92A, or the latest revision thereof.

The Supplier shall comply with all federal, state, county, and local regulations relevant to the delivery of fuels requested under this procurement contract when delivering. Vapor recovery is required on all fuel delivered in Bernalillo County. It is the Supplier's responsibility to adhere to this and all other applicable regulations. In the event of a fine being levied for the Supplier's failure to adhere to any of regulations, the Supplier shall be responsible for the payment of said fine.

Fuel Type Specifications:

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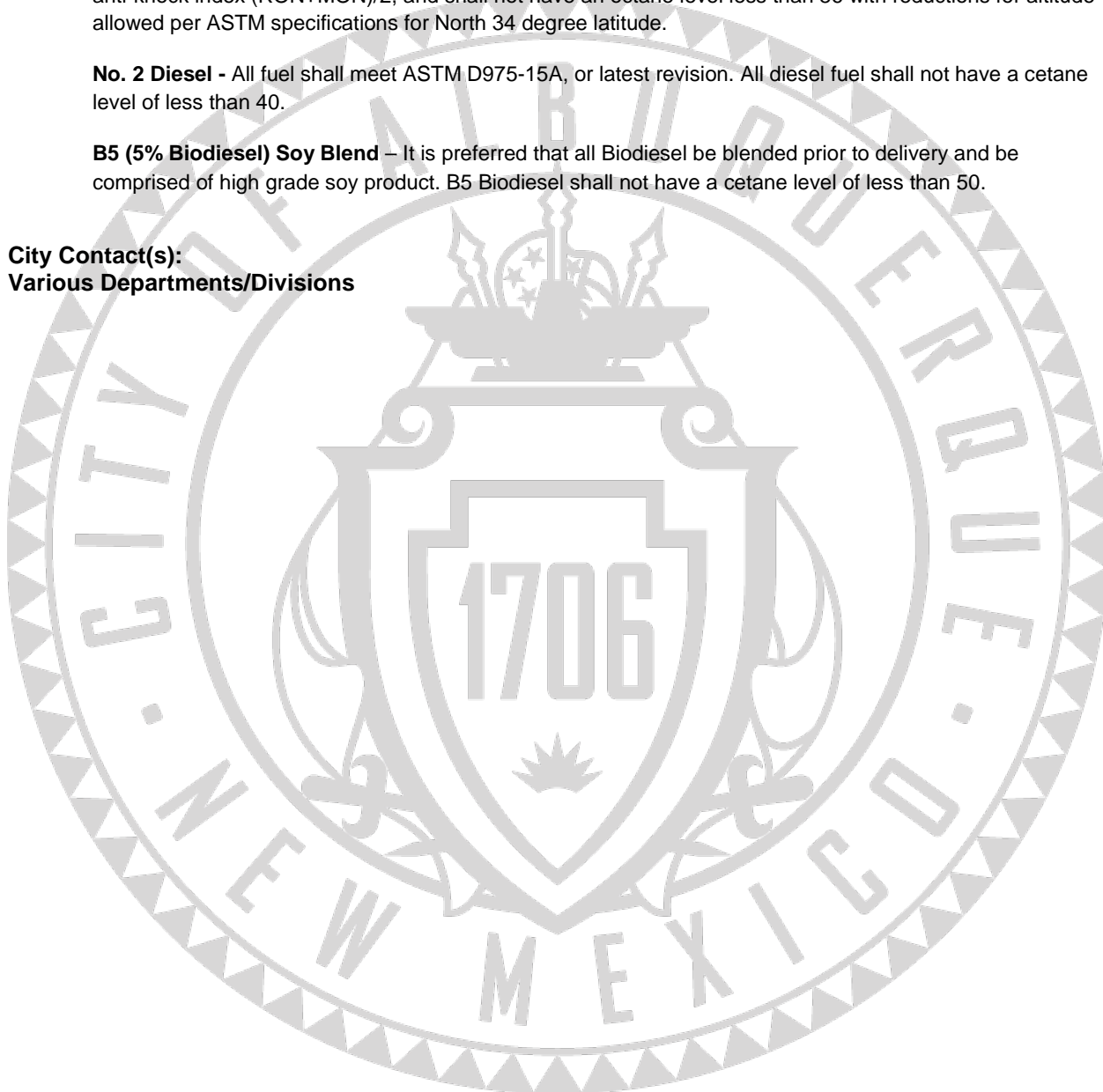
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Page 7 of 8	

Unleaded Regular Gasoline - All fuel shall meet ASTM 4814-14B, or latest revision, and shall be unleaded anti-knock index (RON+MON)/2, and shall not have an octane level less than 86 with reductions for altitude allowed per ASTM specifications for North 34 degree latitude.

No. 2 Diesel - All fuel shall meet ASTM D975-15A, or latest revision. All diesel fuel shall not have a cetane level of less than 40.

B5 (5% Biodiesel) Soy Blend – It is preferred that all Biodiesel be blended prior to delivery and be comprised of high grade soy product. B5 Biodiesel shall not have a cetane level of less than 50.

City Contact(s):
Various Departments/Divisions



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CITY OF ALBUQUERQUE TERMS AND CONDITIONS

Direct all inquiries to: City of Albuquerque, Purchasing Division, P.O. Box 1293, Albuquerque, NM 87103 or call (505) 768-3320.

1. **Contract:** By commencing work, Supplier accepts all Terms and Conditions herein and agrees that, to the extent Supplier terms conflict, these Terms and Conditions shall govern. These Terms and Conditions and any non-conflicting Supplier terms and conditions shall constitute the Contract.
2. **Invoicing:** Department name AND purchase order/procurement contract, or contract release order number MUST be on all invoices, packing slips, shipping notices, freight bills, and correspondence concerning the order. Send invoice original and duplicate to: Accounting, P.O. Box 1985, Albuquerque, NM 87103.
3. **Payment:** City's payment terms are net 30 days unless otherwise stated. City shall not pay late fees, finance fees, or collection fees. Any Supplier that accepts payments by credit card on behalf of City must be Payment Card Industry Data Security Standard compliant.
4. **FOB Destination and Inspection:** The risk of loss, injury and destruction, and legal title to the goods remains with Supplier until the goods reach the location of the City. All goods delivered are subject to inspection upon receipt by City. Department's count will be accepted by Supplier as final and conclusive on all shipments not accompanied by a packing slip. All rejected goods shall remain the property of Supplier and will be returned at Supplier's expense.
5. **Taxes:** Supplier is responsible for determining whether taxes are applicable to the order and for payment of the tax. Applicable taxes are to be included in each invoice due and may not be billed more than sixty (60) days after providing the goods or services to which the taxes apply.
6. **Warranty:** Supplier warrants that the goods and services furnished shall (a) conform to the specifications; (b) be free from defects in materials and workmanship; (c) be suitable for the purpose intended; (d) be new and of most current production; (e) be free from security interests or liens; and (f) not infringe upon or violate any copyrights or patent rights.
7. **Workers' Compensation and Additional Insurance:** Supplier agrees to comply with its state's law pertaining to workers' compensation benefits for its employees. If Supplier fails to comply with the applicable workers compensation law when required to do so, the Contract may be terminated by City. Supplier agrees to procure and maintain any additional insurance coverage requested by City.
8. **Default:** City reserves the right to cancel all or any part of the Contract without cost to the City if Supplier fails to meet the provisions of the Contract and, except as otherwise provided herein, to hold Supplier liable for any excess cost incurred by City due to Supplier default.
9. **Force Majeure:** Neither Supplier nor City shall be liable for failure to perform its obligations under the Contract due to causes beyond the control and without the fault or negligence of either party. Such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless City shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Supplier to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under the Contract.
10. **Termination for Lack of Appropriations:** Notwithstanding any provision in the Contract to the contrary, payments hereunder are contingent upon the Albuquerque City Council making the necessary appropriations. If sufficient appropriations are not made, the Contract may be terminated at the end of City's then current fiscal year upon written notice given by City to Supplier. Such event shall not constitute an event of default and all payment obligations of City and all of its interest in the Contract will cease upon the date of termination. City's determination regarding appropriation shall be accepted by Supplier and shall be final.
11. **Termination for Convenience:** City may terminate the Contract at any time by giving at least 30 days' written notice to the Supplier. In such event, Supplier shall be paid under the terms of the Contract for all goods and/or services provided to and accepted by City, if ordered or accepted by City prior to the effective date of termination.
12. **Contract Changes:** In no case shall the Contract be changed without the prior written approval of City's Chief Procurement Officer.
13. **Assignment:** Neither the Contract, nor any interest therein, nor claim thereunder, shall be assigned or transferred by Supplier, except as expressly authorized in writing by City's Chief Procurement Officer or designee. No such assignment or transfer shall relieve Supplier from the obligations and liabilities under the Contract.
14. **City Furnished Property:** City furnished property shall be returned to City upon request in the same condition as received except for ordinary wear, tear, and modifications ordered hereunder.
15. **Indemnity:** Supplier agrees to defend, indemnify and hold harmless City from any and all claims, actions, suits or proceedings brought against City because of any injury or damage received or sustained by any person or property arising out of or resulting from the Contract or by reason of any asserted act or omission, neglect or misconduct of Supplier or its agents or employees or any subcontractor or its agents or employees. This indemnity shall not be limited by reason of the specification of any particular insurance coverage in the Contract. City shall not indemnify Supplier.
16. **Debarment, Suspension, Ineligibility and Exclusion Compliance:** Supplier certifies (a) that it has not been debarred, suspended or otherwise found ineligible to receive funds by any agency of the executive branch of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States; and (b) should any notice of debarment, suspension, ineligibility or exclusion be received by Supplier, Supplier will notify City immediately.
17. **Conflict of Interest:** No officer, agent or employee of City will participate in any decision relating to the Contract which affects that person's financial interest, the financial interest of his or her spouse or minor child or the financial interest of any business in which he or she has a direct or indirect financial interest.
18. **Interest of Contractor:** Supplier agrees that it presently does not have, and shall acquire no direct or indirect interest which conflicts in any manner or degree with the performance of the terms of the Contract. Supplier will not employ any person who has any such conflict of interest to assist Supplier in performing the services.
19. **No Collusion:** Supplier represents that it has entered into the Contract without collusion on the part of Supplier with any person or firm, without fraud and in good faith. Supplier also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of the Contract, will be offered or given by Supplier or any agent or representative of Supplier to any officer or employee of the City with a view towards securing the Contract or for securing more favorable treatment with respect to making any determinations with respect to performing the Contract.
20. **Audits and Inspections:** At any time during normal business hours and as often as City may deem necessary, there shall be made available to City for examination all of Supplier's records with respect to all matters covered by the Contract. Supplier shall permit City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by the Contract. Supplier understands and will comply with City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.
21. **Compliance With Ethics Provisions:** Supplier certifies that it has not, either directly or indirectly, entered into action in restraint of free competitive bidding and is in compliance with the Ethical Conduct provisions of City's Public Purchases Ordinance. 5-5-22 R.O.A. 1994.
22. **Non-discrimination:** In performing the Contract, Supplier shall comply with the Federal Civil Rights Act of 1964 and Title VII of the Act and the Americans with Disabilities Act of 1990.
23. **Compliance With Laws:** In performing the Contract Supplier shall comply with all applicable laws, ordinances and codes of the federal, state and local governments.
24. **Governing Law:** The Contract is governed by the laws of the State of New Mexico and the City of Albuquerque. The venue for actions arising out of the Contract is Bernalillo County, New Mexico.
25. **Federal Funding:** Procurements involving the expenditure of federal funds may be subject to mandatory applicable federal law and regulations.